IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5200 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIVABHAI DEDHU MAHESHWARI - Appellant(s)
Versus
NARBHERAMBHAI & 1 - Defendant(s)

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Appearance :

MR MEHUL S SHAH : MR SURESH M SHAH for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MRS VASAVDATTA BHATT for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/02/2007

ORAL JUDGMENT

1. The original claimant has filed this appeal to seek enhancement of the compensation awarded by MACT [Auxi.-2] Bhuj-Kutch, vide its judgment dated 8th June,

1998 in MACP No. 325 of 1991. The Tribunal has awarded a sum of Rs.25,650=00 together with 15% interest from the date of the application till realization and proportionate costs, as against the claim of Rs. 1 lakh.

2. The appellant a lady aged about 60 years on the date of the accident i.e., 27th January, 1991 had been to Moti Khakhar bus-stand to see off her daughter-in-law. At that time S.T., bus bearing registration no. GQY 9523 arrived at the bus stand. The daughter-in-law of the appellant boarded the bus and took her seat near the window. The appellant was talking to her while standing outside. All of a sudden, respondent no. 1 the driver of the bus belonging to respondent no. 2, started the bus without taking care to see whether anybody was standing nearby the bus. The bus took off in speed. As a result of the same, the appellant was knocked down and she received serious injuries on both the legs, right hand and right buttock. She also received injuries on other parts of the body on right side. She was removed to Rambaug hospital at Gandhidham and was treated as indoor patient from 28th January, 1991 to 6th February, 1991. Even after her discharge from the hospital, she was treated as outdoor patient for a considerably long time. She, therefore, preferred the claim petition for obtaining compensation

initially of Rs.1,61,500=00, but subsequently the claim was restricted to Rs. 1 lakh. The claim was resisted by the respondents by filing written statement at Exh. 12. They denied the accident. They also denied that respondent no. 1 drove the vehicle negligently or in rash manner and that the appellant had sustained injuries due to accident. According to them, the appellant had filed false claim to obtain unjust monetary benefit.

3. Before the Tribunal, the parties led evidence, oral as well as documentary. The son of the appellant gave evidence at Exh. 34. He is the Power of Attorney holder of the appellant. Amad Mol is an eye witness and he has given his evidence at Exh. 20. These are the witnesses examined by the appellant. The respondents have examined Jasubha Mamad Sama whose evidence is at Exh. 54.

4. On the basis of the material produced before it the Claims Tribunal held that the accident took place due to rash and negligent act of respondent no. 1. It also held that the appellant was entitled to receive compensation in the sum of Rs.25,650=00. The appellant is not satisfied with the quantum of compensation. Hence, she has preferred this appeal. The respondents have neither filed any substantive appeal nor any cross

objections to challenge the findings given by the Claims Tribunal against them.

5. I have heard Mr. Mehul S. Shah learned advocate for the appellant. I have also perused the record and proceedings of the appeal. It is submitted by Mr. Shah that the error apparent on the face of the record has been committed by the Claims Tribunal and that has resulted into gross injustice. According to him, the Tribunal has misread the medical certificate at Exh. 39, wherein the disability has been stated to be 50%, whereas the Claims Tribunal has read it to be 5%. He has further submitted that the Claims Tribunal has taken the income of the appellant at Rs.750=00 per month. It has not considered the future rise in the income and, therefore, inadequate compensation has been awarded under the head of loss of future income. He has also made some grievance with regard to compensation awarded under the head of medical expenses stating it to be very less. He has not raised any dispute with regard to other items. As against that Ms. Vasavadatta Bhatt learned advocate for respondent no. 2 has supported the judgment of the Claims Tribunal and has submitted that the award is just and proper and no interference is required by this Court.

6. I have carefully considered the submissions of the learned advocates. Firstly, I will discuss the issue of negligence. The Tribunal has held the driver of the vehicle solely negligent for the accident. This finding is not challenged by the respondents. Therefore, this finding has become final. I have also perused the discussion thereof and it appears that the accident occurred solely due to negligence of respondent no. 1 and there is no need to disturb this finding. I have also closely perused the relevant documents, especially the medical certificate at Exh. 39. It is dated 13th June, 1991, issued by the office of the Superintendent, Rambaug Government hospital, Gandhidham-Kutch. It is signed by Dr. M.S. Gwalani. The certificate indicates that the appellant had received injuries in a vehicular accident caused by S.T., bus on 28th January, 1991. She was examined by the Doctor on that very day at 1:15 p.m. In the medical certificate injuries are described in detail. Since there is controversy with regard to percentage of the disability, these injuries are required to be reproduced in detail. They are as under :-

> “Soft tissue injuries over Rh hip swelling 2”x2”
> Rh hip region.
> Femur neck Rh side.”

7. The appellant was subsequently also examined for

the evaluation of the physical impairment on 9th May, 1994. She was examined by Dr. Hemang A. Patel of Patel Hospital which is Orthopedic Hospital. He has issued certificate dated 10th May, 1994. He has noted down the cause of injuries in a vehicular accident on 27th January, 1991. It is stated that she has sustained fracture of neck femur. He has noted the results as examined as under:-

> "1) Pain R.L.E.
>
> 2) Limp in R.L.E.
>
> 1) Tenderness over Ant., aspect of Rt., hip.
> 2) Movement of Rt., hip joint is restricted.
> 3) Flexion is possible from 0 degree to 90 degrees.
> 4) Adudation and adduction are possible from 0 degree to 10 degrees.
> 5) Internal Rotation is possible from 0 degree to 10 degrees.
> 6) External rotation is not possible.
> 7) R.L.E., is shortened by 1 G.M.
> 8) Walks with limp and support.
> 9) Unable to sit cross legged and squat.
> 10) Power of Rt., hip is grade IV."

8. The aforesaid certificates do indicate that the appellant had sustained serious injuries and that has caused considerable impairment in her movement. If this is read in context of the evidence of the son of the appellant it will certainly give idea about the real disability suffered by the appellant. It appears to be much more than 5%. The evidence of Kanji Dedhu Maheshwari

witness no. 2 for the appellant at Exh. 34 has stated that his mother had received serious injuries in a vehicular accident which occurred on 27th January, 1991. He has produced medical certificates of the appellant which were issued by the hospitals and which are at Exh. 36, 37, 38 and 39. He has stated that because of the after effects of the injuries suffered by the appellant, the appellant was unable to do any work. She has sustained permanent defects. She has also lost the power of hearing. This fact has not been seriously challenged by the other side. Hence, it becomes clear that the Claims Tribunal has completely misread the medical certificate at Exh. 39. Even the plain reading of the said certificate shows the disability to be 50% and not 5%. This has caused considerable decrease in assessment of the compensation under the head of future loss of income. The Tribunal ought to have assessed it on the basis of 50% disability and not 5%. Further the Tribunal has considered the income of the appellant at Rs.750=00 per month and has assessed the monthly loss of income of Rs.38=00 i.e., annual loss of Rs.456=00. The Claims Tribunal has applied multiplier of 8 and has assessed the compensation under the head of future loss of income at Rs.3,650=00. The Claims Tribunal has committed two fold error in the assessment. As I have already stated that

instead of 50% it has taken disability of 5% and secondly the Tribunal has failed to consider that the income would not have remained static at Rs.750=00. May be that the injured who was aged about 60 years at the time of the accident, there is nothing on record to show that she could have not done labour work for another five to seven years. The Tribunal has applied the multiplier of 8. Therefore, within that span her income was bound to rise. Applying the formula evolved in **Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Municipal Transport Service reported in 1999 (1) GLR p. 338**, the future income could be assessed at Rs.1,100=00 per month and the monthly loss at Rs.550=00 and the annual loss at [Rs.6,600x8] = 53,800=00. That should be the just and proper compensation under the head of future loss of income. The appellant has been awarded Rs.3,650=00 under that head. She is, therefore, entitled to receive additional amount of Rs.49,150=00 under the head of loss of prospective income. For pain, shock and suffering, there are several fractures causing permanent defect to such an extent that she is unable to do any work. She had to undergo extensive medical treatment. Hence, She might have suffered considerable pain and also shock on account of the accident and the resultant injuries. On that count additional compensation of Rs.5,000=00 is required to be

awarded. So far as the amount towards medical expenses is concerned, it appears that it is on the lower side. But considering the fact that she is treated in a Government hospital, the maximum that could have been spent on her on special diet and medical expense would be taken at Rs.7,000=00. Therefore, on that count, also Rs. 5,000=00 additional compensation is required to be awarded. Thus, the appellant is entitled to receive in all a sum of Rs.59,150=00 by way of additional compensation together with interest and proportionate costs as awarded by the Tribunal.

9. In the result, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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